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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

NICOLE L.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D061614

(San Diego County
Super. Ct. No. NJ14428A-B)

PROCEEDINGS for extraordinary relief after reference to a Welfare and
Institutions Code section 366.26 hearing. Laura J. Birkmeyer, Judge. Petition denied;
request for stay denied.

Nicole L. seeks writ review of juvenile court orders at the combined six- and 12-month hearing concerning her sons, four-year-old Braydon S. and six-year-old C.S. (together, the boys). She contends the court abused its discretion by allowing the boys' paternal grandparents to move with the boys to Chicago, Illinois. She argues allowing the paternal grandparents to take the boys to Chicago will prevent her from maintaining beneficial parent-child relationships with them, resulting in her not being able to rebut the presumption of termination of parental rights and adoption at the upcoming Welfare and Institutions Code section 366.26¹ hearing. We deny the petition and deny the request for a stay of the proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

In early January 2011, Cody S., the stepfather of then not-quite-three-year-old Braydon and not-quite-five-year-old C.S., was the caretaker for the boys and for their infant half sister, Danica L., while Nicole worked nights as a certified nursing assistant. On the night of January 4, Braydon was severely injured while in Cody's care, including having an occipital skull fracture, a grade-three liver laceration and multiple bruises. Nicole and Cody insisted it was C.S. who had hurt Braydon. Because Cody and Nicole could not adequately explain how Braydon could have been so badly injured while in Cody's care, the children were taken into protective custody. The San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of Braydon under section 300, subdivision (b) and on behalf of C.S. and Danica under section 300,

¹ Statutory references are to the Welfare and Institutions Code.

subdivision (j), alleging Cody had exposed Braydon to excessive physical discipline/abuse and damage, and C.S. and Danica were also at risk.

On July 15, 2011, after several days of contested hearing, the juvenile court found the allegations to be true. The court ordered Braydon and C.S. detained with the paternal grandparents and Danica with the maternal grandparents. Nicole and Cody appealed. This court affirmed the orders in *In re C.S.* (May 16, 2012, D060169) [nonpub. opn.].

During the next several months, Braydon and C.S. continued to live with the paternal grandparents. The social worker said Nicole had consistently visited the children and participated in reunification services, but she did not accept that Cody had physically abused Braydon. The criminal court imposed a restraining order, restricting Cody from having any contact with the boys for five years, but Nicole refused to separate from him. Her visits with the boys continued to be supervised, and she did not request additional time with them.

At the combined six- and 12-month hearing on March 9 and 14, 2012, the social worker testified the paternal grandparents wished to move from Southern California to Chicago, where they had family roots. The social worker said they had been about to move to Illinois when the dependency case began, but had remained in California to care for the boys. She said if the court allowed the move, the Agency planned to fly Nicole and Danica to Illinois once each month to allow them to visit the boys.

After considering the evidence and argument by counsel, the court terminated services and scheduled a section 366.26 hearing. It authorized the paternal grandparents to move with Braydon and C.S. to Chicago with the condition they keep the social

worker apprised of their address and telephone number, make their home immediately available for an Interstate Compact for the Placement of Children (ICPC) investigation, make the boys available for visits with Nicole as directed by the Agency and available by telephone and that they arrange services for the boys in Chicago.

Nicole petitions for review of the court's orders. (§ 366. 26, subd. (l); Cal. Rules of Court, rule 8.452.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

Nicole contends the court acted unreasonably when it authorized the paternal grandparents to move with the boys to Chicago. She argues the distance will prevent her from visiting them regularly and consistently, she will not be able to maintain the beneficial parent-child relationships she has with them and the sibling relationships they have with their sister, Danica, will erode.

The juvenile court has broad discretion to determine what would best serve a child's best interests. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.) The court must consider the totality of the child's circumstances when making decisions concerning the child. (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) A reviewing court will not disturb a court's ruling in a dependency proceeding "unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." (*Id.* at p. 318.)

The court did not abuse its discretion by authorizing the paternal grandparents to move to Chicago with Braydon and C.S. The social worker testified if the move were allowed, the Agency would fly Nicole and Danica to visit the boys once each month. The court ordered the paternal grandparents to keep the social worker apprised of their address and telephone number, make their home immediately available for an ICPC investigation and the boys available for visits with Nicole and available by telephone and that they arrange services for the boys in Chicago.

We reject Nicole's argument that if the boys move to Chicago her relationship with them will necessarily fade and this will prevent her from showing the beneficial parent-child relationship exception to termination of parental rights and adoption at the section 366.26 hearing. In the months before the hearing, Nicole had been visiting the boys once each week for two hours each time at the visitation center plus attending one biweekly visit between the boys and Danica at the home of the maternal grandparents. There is no reason to believe she would necessarily spend less time with them after they moved to Chicago. Instead, it would be expected that she would take advantage of each trip and arrange to spend several hours visiting the boys each time she and Danica traveled to Chicago.

Nicole's argument the move will prevent her from obtaining a bonding study is not persuasive. There is no reason to assume she could not obtain a bonding study in Chicago should she request one.

The court did not abuse its discretion by authorizing the paternal grandparents to move to Chicago with Braydon and C.S. with specific conditions in place which would allow Nicole to have continuing contact and visits with them.

DISPOSITION

The petition is denied. The request for stay is denied.

McCONNELL, P. J.

WE CONCUR:

McDONALD, J.

O'ROURKE, J.